

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
 WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of:

Amendment of Part 74 of the Commission's
 Rules with Regard to the Instructional
 Television Fixed Service

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MM Docket No. 93-106

To: The Commission

JOINT REPLY COMMENTS OF ITFS PARTIES

American Council on Education, American Association of Community Colleges, Alliance for Higher Education, Arizona Board of Regents for Benefit of the University of Arizona, Board of Regents of the University of Wisconsin System, Iowa Public Broadcasting Board, Regents of the University of New Mexico and Board of Education of the City of Albuquerque, New Mexico, South Carolina Educational Television Commission, State of Wisconsin - Educational Communications Board and University of Maine System (together, "ITFS Parties"), by their counsel, provide these reply comments with respect to MM Docket No. 93-106, relating to the permissibility of channel loading on ITFS stations.

Compromise on Channel Loading

Subsequent to filing their Joint Comments in this proceeding, the ITFS Parties participated in a series of discussions with representatives of the ITFS

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Association, the Wireless Cable Association and various individual ITFS and wireless cable operators. These discussions have resulted in a compromise on the issue of channel loading (attached hereto) that is acceptable to and endorsed by the ITFS Parties.

From their perspective, the compromise is in the public interest. It allows the practice of channel loading, where an ITFS licensee so agrees, thus permitting the creation of full-time excess capacity channels and, at the same time, avoiding scattering educational programming among channels also used for other purposes. The compromise provides for the major protection sought by the ITFS Parties -- the right to simultaneous ITFS use of the number of channels for which the licensee is licensed. It also gives ITFS interests the security of knowing an ITFS licensee engaging in channel loading as provided in the compromise will not, as such, risk loss of its license at renewal time. Furthermore, the compromise includes the good faith commitment of wireless cable entities that channel loading will not be used as a basis for seeking further reallocation of the ITFS channels for commercial use.

It should be noted that the ITFS Parties support the compromise as a whole, and they urge the FCC to adopt it as such. As with any negotiated solution, it attempts to balance the needs and interests of both sides. If the Commission were to accept certain parts of the arrangement, but modify or fail to accept others, the basis for the support of the ITFS Parties could be lost.

Other Issues

There are several other issues raised in this proceeding and addressed in the Joint Comments of the ITFS Parties that are not directly covered by the compromise. The ITFS Parties will not reiterate their views on these issues here, but refer the Commission again to the need for greater FCC scrutiny of ITFS operators' educational bona fides, clarification of allowable ITFS programming and related matters as reflected in their Joint Comments.

Conclusion

For the foregoing reasons, the ITFS Parties urge the Commission to adopt the compromise on channel loading attached hereto.

Respectfully submitted,

AMERICAN COUNCIL ON EDUCATION

**AMERICAN ASSOCIATION OF
COMMUNITY COLLEGES**

ALLIANCE FOR HIGHER EDUCATION

**ARIZONA BOARD OF REGENTS FOR
BENEFIT OF THE UNIVERSITY
OF ARIZONA**

**BOARD OF REGENTS OF THE
UNIVERSITY OF WISCONSIN SYSTEM**

IOWA PUBLIC BROADCASTING BOARD

**REGENTS OF THE UNIVERSITY OF NEW
MEXICO AND BOARD OF EDUCATION
OF THE CITY OF ALBUQUERQUE,
NEW MEXICO**

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**SOUTH CAROLINA EDUCATIONAL
TELEVISION COMMISSION**

**STATE OF WISCONSIN - EDUCATIONAL
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UNIVERSITY OF MAINE SYSTEM

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August 19, 1993

COMPROMISE ON CHANNEL LOADING

Pending the technical and economic viability of digital compression technology, the Commission will permit channel loading and system-wide scheduling on the following basis:

1. Each ITFS licensee will be required to preserve for immediate use or ready recapture at least forty hours per week per licensed channel for the transmission of ITFS programming (including the right to recapture simultaneous use of airtime on the number of the channels for which it is licensed). These rights cannot be abridged by contract and any contracts that do so are superseded. There will be no reduction whatsoever in the amount of mandatory ITFS programming from the current rules.
2. Each ITFS licensee will be required to actually transmit at least twenty hours (twelve hours for the first two years of operation) of ITFS programming each week for each channel licensed to it. Each ITFS licensee will be permitted to load programming satisfying this requirement on less than all of the channels for which it is licensed. The minimum programming requirement (*i.e.* hours 1-20) must be met by transmissions on the channel(s) licensed to the ITFS licensee.
3. In order to promote realization of the benefits of system-wide planning of program schedules, ITFS licensees that choose to do so may agree to the transmission over any MDS or ITFS channel in the system programming satisfying the minimum recapture requirements (*i.e.* hours 21-40). By carefully coordinating their programming schedules as part of a system, the ITFS licensees in an area could create full time educational channels and provide their wireless cable partner with the maximum number of full time commercial programming channels (thus obviating the need for channel mapping technology), while still preserving the ability of the ITFS licensees to transmit multiple programs simultaneously.
4. Leasing and scheduling by ITFS applicants/licensees consistent with the above will establish that the applicant/licensee needs its channel capacity and entitle the applicant/licensee to an initial or renewed license. No demerit for channel loading or system-wide scheduling will be imposed under the Commission's system for selecting from among mutually-exclusive applicants, nor will channel loading or system-wide scheduling have adverse consequences for a renewal application.
5. Similarly, leasing and scheduling by ITFS applicants/licensees consistent with the above will not serve as a basis for future efforts to seek reallocation of non-loaded ITFS spectrum for commercial use, and the parties to the compromise agree not to seek any such reallocation.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Joint Reply Comments of ITFS Parties" was served this 19th day of August, 1993, by first class United States mail, postage prepaid, upon the following:

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